

ORIGINAL

270 CRW 10

(31)

3-7-02
sc

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CINDY L. RIGG,

Plaintiff

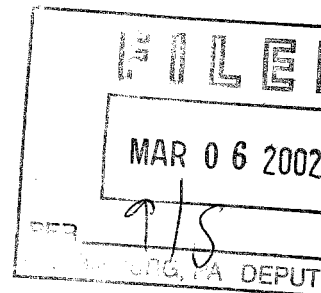
vs.

COUNTY OF DAUPHIN,
DAUPHIN COUNTY SHERIFF'S
DEPARTMENT and
RALPH McALLISTER,
Defendants

:
: CIVIL ACTION NO.: 4:CV-01-0967

:
: JUDGE RAMBO ✓

:
: JURY TRIAL DEMANDED



DEFENDANTS, COUNTY OF DAUPHIN AND
DAUPHIN COUNTY SHERIFF'S DEPARTMENT'S
MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

AND NOW, come Defendants, County of Dauphin and Dauphin County Sheriff's Department, by and through their attorneys, Lavery, Faherty, Young & Patterson, P.C., and file this Motion to Dismiss Plaintiff's Amended Complaint and in support thereof aver as follows:

1. Plaintiff, Cindy L. Rigg, initiated this civil action by filing a Complaint on May 31, 2001 against Defendants, County of Dauphin and Dauphin County Sheriff's Department (hereinafter "Moving Defendants") and Ralph McAllister.

2. On July 10, 2001, Moving Defendants filed a Motion to Dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure and, in the alternative, a Motion for a More Specific Complaint pursuant to Rule 12(e), Federal Rules of Civil Procedure. Thereafter, Defendant, Ralph McAllister, also filed a Motion to Dismiss Plaintiff's Complaint or in the alternative, a Motion for Summary Judgment.

3. By Order dated December 11, 2001, this Honorable Court afforded Plaintiff an opportunity to engage in preliminary discovery into the employment relationships among Defendants; directed Plaintiff to file an Amended Complaint; and denied Defendants' pending dispositive motions as moot without prejudice to file a new motion following the filing of Plaintiffs' Amended Complaint.

4. On February 11, 2002, Plaintiff filed an Amended Complaint in accordance with this Honorable Court's December 11, 2001 Court Order.

5. Plaintiff's Amended Complaint contains four counts and purports to assert: a Title VII claim for violation of Plaintiff's civil rights/sexual harassment and discrimination against the County of Dauphin (Count I); claims pursuant to §§ 1983, 1985 and 1988 against County of Dauphin (Count II); claims pursuant to 42 U.S.C. § 1983 for alleged violation of Plaintiff's Fourth and Fourteenth Amendment rights against Defendant, Ralph McAllister (Count III); and a claim pursuant to 42 U.S.C. § 1983 for violation of Plaintiff's Fourth and Fourteenth Amendment rights against the Dauphin County Sheriff's Department (Count IV).

6. Plaintiff's Amended Complaint seeks compensatory and punitive damages against all Defendants as well as an award of attorney's fees and costs.

7. Count I of Plaintiff's Amended Complaint fails to allege any claims or causes of action pursuant to Title VII for civil rights violations, sexual harassment and/or discrimination against Moving Defendant, County of Dauphin, upon which relief can be granted.

8. Count II of Plaintiff's Amended Complaint fails to allege any claims or causes of action pursuant to 42 U.S.C. § 1983, § 1985 and/or §

1988 against Moving Defendant, County of Dauphin, upon which relief can be granted.

9. Count IV of Plaintiff's Amended Complaint fails to allege any viable claim and/or cause of action under 42 U.S.C. § 1983 for violation of Plaintiff's Fourth and/or Fourteenth Amendment right against Moving Defendant, Dauphin County Sheriff's Department, upon which relief can be granted.

10. Moving Defendant, Dauphin County Sheriff's Department, is not a "person" capable of being sued under 42 U.S.C. § 1983 and, consequently, Count IV of Plaintiff's Amended Complaint must be dismissed with prejudice as a matter of law.

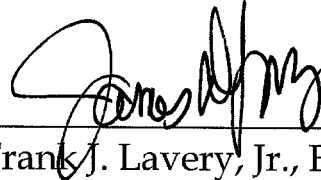
11. Plaintiff's Amended Complaint fails to allege claims for punitive damages against Moving Defendants upon which relief can be granted.

WHEREFORE, Defendants, County of Dauphin and Dauphin County Sheriff's Department, respectfully request that this Honorable Court grant their Motion to Dismiss Plaintiff's Amended Complaint against them with prejudice and enter judgment in their favor along with the allowable costs of this action.

Respectfully submitted,

Lavery, Faherty, Young &
Patterson, P.C.

By: _____



Frank J. Lavery, Jr., Esquire
Atty No. 42370

James D. Young, Esquire
Atty No. 53904

225 Market Street, Suite 304
P.O. Box 1245

Harrisburg, PA 17108-1245

Attys for Defendants, County of
Dauphin and Dauphin County
Sheriff's Department

DATE: _____

03/06/2002

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

| | | |
|--------------------------|---|--------------------------------|
| CINDY L. RIGG, | : | |
| Plaintiff | : | CIVIL ACTION NO.: 4:CV-01-0967 |
| | : | |
| vs. | : | JUDGE RAMBO |
| | : | |
| COUNTY OF DAUPHIN, | : | |
| DAUPHIN COUNTY SHERIFF'S | : | |
| DEPARTMENT and | : | JURY TRIAL DEMANDED |
| RALPH McALLISTER, | : | |
| Defendants | : | |

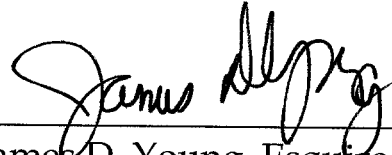
CERTIFICATE OF CONCURRENCE/NONCONCURRENCE

I, James D. Young, Esquire, co-counsel for Moving Defendants, do hereby certify that I contacted Spero Lappas, Esquire, counsel for Plaintiff, who did not concur in the attached Motion to Dismiss. I further certify that I contacted E. Ralph Godfrey, Esquire, counsel for Co-Defendant, Ralph McAllister, who does concur in the attached Motion to Dismiss Plaintiff's Amended Complaint.

Respectfully submitted,

Lavery, Faherty, Young
Patterson, P.C.

By: _____



James D. Young, Esquire

Atty No. 53904

225 Market Street, Suite 304

P.O. Box 1245

Harrisburg, PA 17108-1245

Attys for County of Dauphin

and Dauphin County

Sheriff's Department

DATE: _____


03/06/2002

CERTIFICATE OF SERVICE

I, Linda L. Gustin, an employee with the law firm of Lavery, Faherty, Young & Patterson, P.C., do hereby certify that on this 6th day of March, 2002, I served a true and correct copy of the foregoing **Defendants, County of Dauphin and Dauphin County Sheriff's Department's Motion to Dismiss Plaintiff's Amended Complaint** via hand delivery, addressed as follows:

Spero T. Lappas, Esquire
Law Offices of Spero T. Lappas
205 State Street
P.O. Box 808
Harrisburg, PA 17108-0808
(Attorney for Plaintiff)

E. Ralph Godfrey, Esquire
Metzger, Wickersham, Knauss & Erb
3211 N. Front Street
P. O. Box 5300
Harrisburg, PA 17110-0300
(Attorney for Defendant McAllister)



Linda L. Gustin